IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1127 OF 2005

WITH

CRIMINAL WRIT PETITION NO.1376 OF 2005

Dilip Mahadeo Chivate
and Ors. ..Petitioners

Vs.

Suresh Jyotiram Mhamane
& Anr. ..Respondents

...

Mr. S.G.Deshmukh Advocate for Petitioners
Mr. Shivajirao Misal for Respondent no.1
Mr. S.R.Shinde, A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : AUGUST 11,2005

P.C.

1. Heard the learned advocate for the petitioners and the learned A.P.P. for the State.

2. The petitioners are seeking quashing of the complaints bearing Nos. 100 of 2005 and 71 of 2005 filed by respondent no.1 before the learned

J.M.F.C. Miraj. The said complaints i.e complaint No.100 of 2005 is under Sections 465, 467, 468, 471 and 420 r.w. 34 of IPC and complaint No.71 of 2005 is under Sections 427, 465, 466, 468, 471, 472, 474 r.w. 34 of IPC.

3. In the said cases, the learned Magistrate has directed investigation under Section 156(3) of Cr.P.C. The petitioners are also aggrieved by this order passed by the learned Magistrate.

4. The learned advocate for the petitioners has contended that on perusal of the entire complaint, it does not make out any offence against the petitioners and therefore, the complaint is liable to be quashed. It is submitted that the dispute is purely of civil nature and the complaint has been filed only with a view to harass the petitioners. Thus, it is submitted that the learned Magistrate ought not to have passed an order under section 156(3) of Cr.P.C.

5. The Division Bench of this Court in the case of **B.S.Khatri (Co.) & Ors. Vs. State of Maharashtra**

& Anr. reported in **2004(1) Bom.C.R.424,** has observed in para 13 of the said decision that the order under Section 156(3) of the Code can be revised by a Sessions Judge or by this Court under Section 397 r.w. 401 of the Code. Thus, it is observed that alternate remedy is available to the petitioners. It is further held by the Division Bench in para 22 of the said decision that it is not therefore open for the Court to decide as to whether averments in the complaint are reliable or genuine and whether cognizance is liable to be taken or not. It is further observed that it is the exclusive jurisdiction of the Magistrate trying the offence and not for the High Court to decide at such premature stage.

6. In my view, the petition is premature, there is no need to interfere at this stage as all that has been done by the learned Magistrate is to pass an order Under Section 156(3) of Cr.P.C. The report that the police may file as a consequence of that order may disclose no offence therefore, the Magistrate may drop the complaint. In this view of the matter to quash the order at this stage would

be unwarranted and premature. In case the report discloses possible commission of any offence the Magistrate may decide to take cognizance of the matter and issue process. The order of issuance of process can also be challenged.

7. From the decision of Division Bench, it is clear that writ petition should not be entertained in respect of order passed by Magistrate Section 156(3) of Cr.P.C. as there is an alternate remedy of challenging the order which is available to the petitioners. Moreover, the Division Bench has also observed that quashing of an order under Section 156(3) of Cr.P.C. by the High Court would be very premature. Thus, in view of the decision of the Division Bench of this Court in the case of B.S.Khatri (supra), I find that at this stage this is not a fit case to interfere. In case, the report filed by the police is adverse, in that case, it is open to the petitioners to adopt appropriate proceedings.

8. In case the investigating agency is of the opinion that the custody of the petitioner is

required in such case the investigating agency shall give 96 hours notice to the petitioners, prior to their arrest. In case such notice is received by the petitioners, the petitioners to prefer necessary application before the concerned Sessions Court. Needless to say that if such an application is preferred the concerned Sessions Judge shall dispose of the said application on merits.

9. With the above directions, writ petitions are disposed of.

10. Certified copies expedited.

11. Authenticated copies be issued to the parties.

[V.K.TAHILRAMANI,J.]